IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5682 of 1999
with
CIVIL APPLICATION No 7086 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATWARLAL SHANKERLAL PRAJAPATI
Versus
STATE OF GUJARAT

Appearance:
MR MK VAKHARIA for Petitioner No. 1
MR.R.C.KODEKAR, Addl.GOVERNMENT PLEADER
for Respondent No. 1-3
RULE SERVED BY DS for Respondent No. 1-5
MR KS JHAVERI for Respondent No. 4-5

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

Special Civil Application is preferred by a tenant who is in possession of land bearing survey no.1515/1/3 paiki admeasuring 14.33 sq.mtr. situated in Mansa Town of Mehsana District (now Gandhinagar District). He has challenged the award made by the Land Acquisition Officer on 18.6.99 in L.A.Q.Case no. 5/98 which is annexed to the petition at Annexure `C'.

The petitioner has contended that though he was heard under Sec. 5-A of the Land Acquisition Act (hereinafter referred to as the Act), notice under Sec. 9(3) was not given. The Collector is required to cause a public notice as contemplated under Sub-sec.1 of Sec. 9, however, Sub-sec.3 of Sec.9 being relevant is reproduced hereunder :

" (3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situated."

There is no allegation that the Collector has not issued public notice as contemplated under Sec. 9(1). Even if notice under Sec. 9(1) is published, Sec. 9(3) contemplates that the notice should also be served on the occupier. In the instant case, after following the procedure, according to the Special Land Acquisition Officer, award was made. However, fact remains that notice under Sec. 9(3) was not served. It is under these circumstances, this petition is required to be considered.

In view of the fact that the Special Land Acquisition Officer is merely making an offer to award compensation to the persons entitled and aggrieved person can always approach the Reference Court for a higher claim in accordance with law and it is always open to the Reference Court, considering the facts and circumstances and the evidence placed on record, to determine the market value. In the instant case, it appears that the petitioner came to know subsequent to the making of the award, therefore, he rushed to this Court. The Division Bench on 22.12.99 has protected the petitioner by directing parties to maintain status quo and that is how even today he is in possession. Though the acquiring body has paid the amount to the Government, the possession of the land could not be taken and could not

be handed over to the acquiring body. It is under these special circumstances, the petitioner has approached this court. We think it just and proper to give directions so as to see that no injustice is caused to the petitioner. However, before giving direction, we would like to point out that the Division Bench of this Court in case of Mohamadsarif Hakimji Chippa and another V/S State of Gujarat and another reported in AIR 1967 Gujarat 269 was required to consider the question of illegality in acquisition in absence of notice under Sec. 9(3). In para 3 the Court stated as under :

"It was submitted that the petitioners are tenants or occupants of the premises acquired and there is no serious dispute about it. It is settled law that notice under sub-section (3) of Section 9 is mandatory to be given to the occupants and failure to give notice would render the award not binding on them. No notice was served admittedly on the present petitioners by the Special Land Acquisition Officer. The first award dated 3rd of April, 1961, therefore, is invalid in law. Now, in order to support this submission, Mr.Rebello relied upon the decision in Laxmanrao Kristrao Jahagirdar V/s Provincial Govt. of Bombay, 52 Bom LR 316 = (AIR 1950 Bom 334), wherein it has been laid down that under Section 9(3) of the Land Acquisition Act, 1894, it is only in the case of an occupier that the failure to serve a notice by itself may furnish him with a cause of action by which he could challenge the award. In the case of persons other than the occupier who are interested in the land, the mere omission or failure to serve a notice is not sufficient in itself to entitle them to challenge the award but they must establish that the failure to give them such notice was a wilful or perverse or fraudulent failure on the part of the Collector. There can be no quarrel with the principle laid down that under sub-section (3) of Section 9 the giving of notice by the Collector to the occupant is mandatory and it is a condition precedent to be fulfilled to make the award binding on them. it is an admitted position in the instant case that no such notice was given to the present petitioners who were tenants of the various premises to be acquired the result would be that, if the document dated 3rd April, 1961 constituted by itself the award, that award and all the proceedings that followed upto the giving of

notices to the petitioners under Section 9 are not binding in law on them. It is also clear that so far as the proceedings that preceded the requirement of giving of such notice under Section 9 would not be touched and, therefore, the publication of the notifications under Section 4 and Section 6 of the Land Acquisition Act would stand as valid acts on the part of the Collector."

The Andhra Pradesh High Court in case of Yousuf Begam V/S The State of Andhra Pradesh and others reported in AIR 1969 Andhra Pradesh 10, considering the question of absence of notice to a person interested in land compulsorily acquired, held that :

" An award passed by the Collector cannot be quashed only because an interested person is not served with notice under Section 9(3) and that he comes to know about the same after the passing of the award. Nevertheless, though such a person was not a party to the land acquisition proceedings, he is entitled to seek a reference to the Civil Court on an application to be made by him to the Collector under Sec. 18. In the case of such an application, no question of limitation arises, when a notice under Sec. 9(3) is not served on the party who was entitled to it."

In case of State of Tamil Nadu & Anr. V/s Mahalakshmi Ammal & Ors. reported in AIR 1996 SC 866 irregularities in service of notice under Secs. 9 & 10 were considered. In para 9, the Court pointed out that

" equally even if there is an irregularity in service of notice under Secs. 9 & 10, it would be curable irregularity and on account thereof, award made under Sec. 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Sec. 28-A."

Therefore, the question would be whether the Special Land Acquisition Officer should be directed to make an award or the petitioner should be permitted to move for a reference.

There is a consensus that if the petitioner is permitted to make a reference, ends of justice would be served and in our opinion even if the Land Acquisition officer renders his award after hearing the tenant in

this case, it would be open for the petitioner to seek a reference. In the instant case, he could have made a reference but in view of the fact that he approached this Court, he could not make a reference. It is under these peculiar circumstances, we permit the petitioner to make an application for a reference and reference shall be made within a period of one month and on such reference being made, Reference Court shall consider the same. The Special Land Acquisition officer shall make a reference to the Court to decide the same in accordance with law to determine the market price and entitlement of the amount, without raising contention about the limitation. The petitioner on acquiring knowledge about award being delivered has approached this Court. Admittedly, in para 6 of the affidavit, Joshi Y.P. Sp.Land Acquisition Officer has stated that notices were given to the owner of the property and has not denied the contention that no notice u/s 9(3) of the Act was served upon occupier. In absence of positive statement by Sp.Land Acquisition Officer who is expected to serve notice u/s 9(3) of the Act, the occupier's say is to be accepted. In view of the order passed in Special Civil Application, no orders are required to be passed in the Civil Application. The petition stands allowed accordingly with no order as to cost. Rule is made absolute accordingly. Status quo granted earlier stands vacated.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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